

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:08 CR 12-1**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
AMY ELIZABETH ARCH,)	
)	
Defendant.)	
_____)	

THIS CAUSE coming on before the court, pursuant to a motion filed by defendant's counsel, entitled "Motion for Modification of Detention Order Pending Trial" (#34). From an examination of the motion, the undersigned has determined that the defendant has not shown good and sufficient reason to hold another detention hearing in this matter. 18 U.S.C. § 3142(f)(2) states as follows:

The hearing may be reopened, before or after determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.


An examination of the motion of the defendant shows that it is based upon events that may happen in the future but which have not yet occurred. Further, the motion is based upon a misapprehension of the law. The defendant states that the

United States Sentencing Guidelines directs a certain range of punishment for the defendant. If the defendant pleads guilty to the crime of misdemeanor simple assault in violation of 18 U.S.C. § 113(a)(4), then the maximum possible punishment is a term of imprisonment of not more than six months, a fine not to exceed the sum of \$5,000., or both. The punishment provided for the offense would classify this matter as a “class B misdemeanor” as provided under 18 U.S.C. § 3559(a)(7). The United States Sentencing Guidelines do not apply to such an offense. Further, although a plea agreement has been filed, the defendant has not entered such a plea of guilty. At the present time the defendant’s forecast of reasons for a detention hearing do not meet the requirements of the statute. As a result the undersigned will deny the motion of the defendant.

ORDER

WHEREFORE, IT IS **ORDERED** that the defendant’s “Motion for Modification of Detention Order Pending Trial” (#34) is hereby **DENIED**.

Signed: May 21, 2008



Dennis L. Howell
United States Magistrate Judge

